THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

W.P. No.26098 of 1997

Date: 04.04.12007

Between:

G. Bharathi Devi … Petitioner

AND

Electronics Corporation of India Ltd.,
represented by its Chairman-cum-
Managing Director, Hyderabad and another … Respondents

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

W.P. No.26098 of 1997

-

O R D E R:

This writ petition is filed questioning the action of the Electronics Corporation of India Ltd., the first respondent herein in not taking into consideration the service rendered by the petitioner in Bharat Dynamics Ltd., the second respondent as arbitrary, illegal and malafide and the petitioner also sought for payment of difference of amounts together with interest at 24% per annum.

The facts in brief, which are relevant for the purpose of this case are:-

The petitioner joined the second respondent organisation on 25.11.1972 as Tradesman. She was transferred to the first respondent organization on 01.07.1980 along with a Mini Computer Project with effect from 01.07.1980 and since then the petitioner had been working in the first respondent organization. In pursuance of the scheme framed by the first respondent providing for voluntary retirement, on 14.07.1997, the petitioner through her letter dated 06.08.1997 applied for permission to retire under the Special Voluntary Retirement Scheme. In the said letter, she requested the General Manager (P & A) of the first respondent to let her know whether her B.D.L. service will be taken into consideration for payment of voluntary retirement scheme or not, so that she would like to apply only if the B.D.L. service is counted for payment of voluntary retirement benefit. It appears the

petitioner was orally informed by the officials of the first respondent that the first respondent will not take into consideration the service rendered by her in the second respondent organization. Therefore, she sent another letter dated 06.08.1997 seeking permission for voluntary and unconditional retirement in terms of the first respondent circular dated 14.07.1997. However, a note was added in the manuscript, which reads as under:-

> "My request for Special V.R. is subject to consideration that my B.D.L. service will be counted. If this service is not considered for Special V.R. my application may be cancelled. My representation copy addressed to GM (PA) is enclosed)."

The petitioner once again wrote another letter dated 20.08.1997 wherein she stated that during the course of her discussions with the personnel group department she came to understand that a decision whether or not to consider the B.D.L. service for payment of voluntary retirement benefit is not yet arrived by the first respondent organisation and therefore, she informed in the said letter as under:-

> "1. Pending final decision about counting of my previous service, I may be granted voluntary retirement on the basis of my service in ECIL.
>
> 2. In case a decision is taken favourably to count my previous service in BDL or in case the same benefit is granted at a latter date to my colleagues who are transferred from BDL along with me, the same should be passed on to me.
>
> I request you to consider my VR application favourably keeping the above points in view.
>
> I further request you to communicate your decision at an early date."

Accepting the request of the petitioner, the first respondent permitted her to take voluntary retirement with effect from 15.09.1997 and she was relieved of her duties of the Corporation from the said

date through the proceedings of the first respondent dated 15.09.1997. Consequently, the petitioner was paid a sum of Rs.3,08,322/-, which was received by her under a cheque dated 22.09.1997. Thereafter, the petitioner filed the present writ petition.

Heard Dr. P.B. Vijay Kumar, the learned counsel for the petitioner and Sri D. Srinivas, the learned counsel appearing for respondent No.1.

Learned counsel for the petitioner submitted that as per the policy framed by the Government of India providing for voluntary retirement of employees of public enterprise it is clearly mentioned that when an employee moves from one enterprise to another enterprise with the consent of the management of both the PSEs and the lending organization has liquidated its liability towards G.P.F. Gratuity, Earned Leave, Half Pay Leave by making lumpsum payment to the borrowing organisation in respect of the amount due to the concerned employee for the service rendered in the lending organization in terms of BPE'S instructions dated 14.12.1982 etc., the service rendered in the previous organization of the employee would be taken into account for the purpose of determination of ex-gratia. Relying upon this, the learned counsel says that the petitioner is entitled for consideration of her service rendered in the second respondent organisation for working out the monetary benefits under the voluntary retirement scheme.

Per contra, Sri D.Srinivas submitted that neither the Voluntary Retirement Scheme of the first respondent framed on 29.03.1989 nor the latest scheme dated 14.07.1997 under which the petitioner was given voluntary retirement, made any provision for consideration of the previous service rendered by any employee for the purpose of computation of monetary benefits.

From the facts narrated herein above, it is clear that though the

petitioner initially insisted that she would seek voluntary retirement if she is paid the benefits of the service rendered in the second respondent organization, she has herself changed her mind and sent a letter dated 20th August, 1997 seeking voluntary retirement subject to the first respondent taking a final decision about the previous service rendered by the persons such as the petitioner. It is significant that under condition No.2 of the letter dated 20th August, 1997, which is extracted above, wherein she clearly stated that if a decision is taken in favour of counting the previous service rendered in B.D.L. or in case the same benefit is granted at a latter date to the petitioner's colleagues, the same benefit will be given to her.

It is not in dispute that neither the 1989 scheme nor the 1997 scheme provide for taking into account the past service rendered in the second respondent organization. Clause-i (a) (b) of the scheme dated 14.07.1997 reads as under:-

"i. The ex-gratia payment will consist of:

(a) 1 ½ months emoluments for every completed year of service as at present, as per the existing Voluntary Retirement Scheme and

(b) Additional ½ month's emoluments for every completed year of service calculated as per the existing Voluntary Retirement Scheme.

OR

The monthly emoluments at the time of Voluntary Retirement multiplied by the balance of months' of service left before normal date of retirement."

Clause 2 (e) of the scheme dated 29th March, 1989, which was existing on the date of coming into force of the latter scheme reads as under:-

"In addition, an employee whose request for

> Voluntary retirement is accepted would also be entitled to an ex-gratia payment equivalent to 1½ month's emoluments (Pay+DA+Adhoc/Interim Relief) for each completed year of service in the company or the monthly emoluments at the time of voluntary retirement multiplied by the balance months' of service left before normal date of retirement, whichever is less."

From the aforementioned clause, it is clear that the ex-gratia payment equivalent to 1½ month's emoluments for each completed year of service rendered "in the company" is envisaged in the existing scheme. I am therefore of the view that the first respondent's schemes do not contemplate taking into consideration the service rendered by an employee taking voluntary retirement in any organisation other than the first respondent company. As held by the Supreme Court in **PUNJAB NATIONAL BANK Vs. VIRENDER KUMAR GOEL**[1], a person who seeks voluntary retirement is bound by the terms of the scheme under which he seeks such voluntary retirement and it is for the employee to decide to take it or leave it.

From the admitted facts, it is clear that the petitioner having realised that her past service was not being taken into consideration has voluntarily applied for taking retirement and totally left the issue of consideration of her past service rendered in the second respondent to the decision of the first respondent. It is an admitted case that the first respondent *de hors* the scheme dated 14.07.1997 has not taken a separate decision to pay the benefits of the past service to either the petitioner or any other similarly placed employees who took voluntary retirement. Having thus left the issue to the decision of the first respondent, taken voluntary retirement and received all the amounts consequent on her voluntary retirement, it is not open to the petitioner to turn round and file a writ petition seeking further benefits. The petitioner does not have any vested right to insist that her past service rendered in a different organisation shall be taken into consideration

for the purpose of payment of benefits under Voluntary Retirement Scheme framed by the first respondent. It would have been open to the petitioner not to have taken voluntary retirement and having taken a decision to take voluntary retirement, the petitioner is not entitled to seek further benefits other than those, which are envisaged in the scheme.

The learned counsel for the petitioner, however, submitted that since the first respondent is a Government of India undertaking, it is bound by the general circular issued by the Government of India. If the petitioner felt that the scheme framed by the first respondent is not inconsonance with the general scheme of Government of India, it would have been open to her to question the validity of the scheme framed by the first respondent. As she has not done so, she is not entitled to claim any benefits under the general scheme framed by the Government of India.

For the abovementioned reasons, the writ petition is wholly misconceived and hence, the same is dismissed. No order as to costs.

_____

C.V.NAGARJUNA REDDY,J

Dated:04.04.2007
bud

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

W.P.No.26098 of 1997

-

-

-

-

Date: 04.04.12007

---

[1] (2004) 2 SCC 193